

AMENDED IN SENATE MAY 9, 2006

SENATE BILL

No. 1208

Introduced by Senator Ortiz

(Principal ~~coauthor: Assembly Member Jerome Horton~~ *coauthors:*
Assembly Members Jerome Horton and Koretz)
(*Coauthors: Assembly Members Jones and Lieber*)

January 26, 2006

An act to repeal and add Section 22963 of the Business and Professions Code, to amend Section 308.1 of the Penal Code, and to repeal Section 30101.7 of the Revenue and Taxation Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

SB 1208, as amended, Ortiz. Tobacco products.

(1) Existing law, the Cigarette and Tobacco Products Tax Law, requires every distributor of cigarettes to pay taxes, as prescribed, on the distribution of cigarettes. In addition to the requirement to pay taxes on the distribution of cigarettes, existing law also requires distributors and wholesalers of cigarette and tobacco products to be licensed by the State Board of Equalization. Existing federal law, known as the Jenkins Act, requires any person that sells or transfers, in interstate commerce, cigarettes into a state that taxes the sale or use of cigarettes to file and report specified information with the tobacco tax administrator of that state.

Existing law prohibits, except under specified circumstances, a retail sale of cigarettes that is not a face-to-face sale, as defined, and prohibits distribution of tobacco products through the mail. Existing law exempts a person from the face-to-face sale restriction, if that

person has paid all applicable state taxes and is in compliance with the federal Jenkins Act.

This bill would repeal the face-to-face sale requirement, the related tax reporting provisions, and the prohibitions against distribution through the mail, and would, instead, with certain exceptions, prohibit shipping or transporting tobacco products to persons in California, and would establish criminal and civil penalties for violation of this prohibition.

(2) Existing law prohibits the offer, sale, distribution, or importation of a tobacco product know as “bidis” or “beedies,” as defined, unless it is sold or intended for sale in business establishments that exclude minors.

This bill would amend the definition of “bidis” or “beedies” to include any product that is marketed and sold as “bidis” or “beedies” and would clarify that persons who violate this prohibition are subject to both criminal and civil liability.

(3) By changing the definition of related crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that the
2 shipment of cigarettes and tobacco products sold via the Internet
3 or by telephone or by mail order to residents of this state poses a
4 serious threat to public health, safety, and welfare, and to the
5 economy of the state. The Legislature also finds that when
6 cigarettes and tobacco products are shipped directly to a
7 consumer, adequate proof that the purchaser is of legal age
8 cannot be obtained by the vendor, thereby enabling sellers of
9 cigarettes or tobacco products to evade provisions of law
10 designed to prevent sales to minors. It is also the Legislature’s
11 finding that by preventing shipment of cigarettes or tobacco

1 products directly to consumers, the state will be better able to
2 measure and monitor cigarette consumption and to better
3 determine the public health and fiscal consequences of smoking
4 and using tobacco products. The Legislature further finds that
5 existing penalties for cigarette bootlegging are an inadequate
6 deterrent.

7 SEC. 2. Section 22963 of the Business and Professions Code
8 is repealed.

9 SEC. 3. Section 22963 is added to the Business and
10 Professions Code, to read:

11 22963. (a) It is unlawful for any person engaged in the
12 business of selling or distributing cigarettes or tobacco products
13 to ship or cause to be shipped any cigarettes or tobacco products
14 to any person in this state who is not any of the following:

15 (1) Licensed pursuant to Division 8.6 (commencing with
16 Section 22970).

17 (2) An export warehouse proprietor pursuant to Chapter 52 of
18 the Internal Revenue Code (26 U.S.C. Sec. 5701 et seq.).

19 (3) An operator of a customs bonded warehouse pursuant to
20 Section 1311 or 1555 of Title 19 of the United States Code.

21 (4) A person who is an officer, employee, or agent of the
22 federal government, or of this state or of a department, agency,
23 instrumentality, or political subdivision of the federal
24 government or this state, when the person is acting in accordance
25 with his or her official duties.

26 (b) It is unlawful for any common or contract carrier to
27 knowingly transport cigarettes or tobacco products to any person
28 in this state reasonably believed by the carrier to be other than a
29 person described in subdivision (a). For the purposes of this
30 subdivision, if cigarettes or tobacco products are transported to a
31 home or residence, it shall be presumed that the common or
32 contract carrier knew that the person was not a person described
33 in subdivision (a). It is unlawful for any other person to
34 knowingly, or with reason to know, transport cigarettes or
35 tobacco products to any person in this state, other than a person
36 described in subdivision (a).

37 (c) When a person engaged in the business of selling or
38 distributing cigarettes or tobacco products ships or causes to be
39 shipped any cigarettes or tobacco products to any person in this
40 state, other than in the cigarette or tobacco product

1 manufacturer's original container or wrapping, the container or
2 wrapping shall be plainly or visibly marked with the term
3 "cigarettes" or "tobacco products."

4 (d) Notwithstanding any other provision of this division, upon
5 discovery by the State Board of Equalization or a law
6 enforcement agency of any cigarettes or tobacco products that
7 have been, or are being, shipped or transported in violation of
8 this section, the board or the law enforcement agency may seize
9 and take possession of the cigarettes or tobacco products. Any
10 cigarettes or tobacco products seized by a law enforcement
11 agency shall be delivered to the board, or its designee, within
12 seven days, unless the cigarettes or tobacco products will be
13 destroyed by that law enforcement agency, or unless the
14 cigarettes or tobacco products are otherwise required to be used
15 as evidence in an administrative, criminal, or civil proceeding, or
16 as part of an ongoing law enforcement operation. Any cigarettes
17 or tobacco products seized by the board or delivered to the board
18 by a law enforcement agency shall be deemed forfeited and the
19 board shall comply with procedures set forth in Chapter 7.5
20 (commencing with Section 30435) of Part 13 of Division 2 of the
21 Revenue and Taxation Code.

22 (e) (1) A violation of this section is a misdemeanor and shall
23 be punishable by a fine of not less ~~that~~ *than* five thousand dollars
24 (\$5,000) but not more than fifty thousand dollars (\$50,000), or by
25 imprisonment not to exceed one year in a county jail, or both the
26 fine and imprisonment.

27 (2) In addition to the criminal penalty, the Attorney General,
28 district attorney, or city attorney may bring a civil action against
29 any person, firm, corporation, or other entity that violates this
30 section. If a court determines that this section has been violated,
31 the court shall assess civil penalties not to exceed five thousand
32 dollars (\$5,000) per violation, plus the costs of investigating and
33 prosecuting the action, including expert fees, reasonable
34 attorney's fees, and court costs.

35 SEC. 4. Section 308.1 of the Penal Code is amended to read:

36 308.1. (a) Notwithstanding any other provision of law, no
37 person shall sell, offer for sale, distribute, or import any tobacco
38 product commonly referred to as "bidis" or "beedies," unless that
39 tobacco product is sold, offered for sale, or intended to be sold in

1 a business establishment that prohibits the presence of persons
2 under 18 years of age on its premises.

3 (b) For purposes of this section, “bidis” or “beedies” means
4 any of the following:

5 (1) A product containing tobacco that is wrapped in temburni
6 leaf (*diospyros melanoxylon*) or tendu leaf (*diospyros exculpra*).

7 (2) A product that is marketed and sold as “bidis” or
8 “beedies.”

9 (c) Any person who violates this section is guilty of a
10 misdemeanor and is also subject to a civil action brought by the
11 Attorney General, a city attorney, county counsel, or district
12 attorney for an injunction and a civil penalty of up to two
13 thousand dollars (\$2,000) per violation. This subdivision does
14 not affect any other remedies available for a violation of this
15 section.

16 SEC. 5. Section 30101.7 of the Revenue and Taxation Code
17 is repealed.

18 SEC. 6. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the
23 penalty for a crime or infraction, within the meaning of Section
24 17556 of the Government Code, or changes the definition of a
25 crime within the meaning of Section 6 of Article XIII B of the
26 California Constitution.